

Senate Amendment 5244

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1 1 Amend House File 2734, as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. Page 64, by inserting after line 4 the
1 4 following:
1 5 <Sec. _____. NEW SECTION. 147.105 PATIENT
1 6 PROTECTION == HEALTH CARE WORKERS == REPORT OF ADVERSE
1 7 EVENTS.
1 8 1. DEFINITIONS. As used in this section, unless
1 9 the context otherwise requires:
1 10 a. "Health care worker" means any individual
1 11 employed by or under contract with a hospital, health
1 12 care provider, or health care agency to provide health
1 13 care services.
1 14 b. "Professional standards of care" means
1 15 authoritative statements that describe a level of care
1 16 or performance common to the profession by which the
1 17 quality of professional practice can be judged and
1 18 which reflect the values and priorities of the
1 19 profession.
1 20 2. A health care worker, who reasonably believes a
1 21 particular practice the health care worker has
1 22 observed occurring at the health care worker's place
1 23 of employment, based on the health care worker's
1 24 professional standards of care or professional code of
1 25 ethics, is a violation of health and safety laws or a
1 26 breach of public safety that may lead to harm to
1 27 patients, consumers, or citizens, may report the
1 28 information relating to the violation or breach within
1 29 fourteen days of its occurrence to the health care
1 30 worker's supervisor or employer, in order that
1 31 corrective action can be taken. The health care
1 32 worker shall be protected against reprisals or
1 33 retaliatory or punitive action by the individual or
1 34 institution receiving such a report.
1 35 3. If after a reasonable period of time for
1 36 correction of the violation or breach reported
1 37 pursuant to subsection 2, the health care worker
1 38 continues to see the particular practice occurring in
1 39 the workplace giving rise to the report, the health
1 40 care worker may disclose information to the licensing
1 41 board, the department, the division of insurance in
1 42 the department of commerce, a member or employee of
1 43 the general assembly, the attorney general, a
1 44 state-mandated health information collection agency,
1 45 any other public official or law enforcement agency,
1 46 federal government agency or program, the governing
1 47 board of the health care worker's employer or
1 48 institution, the health care worker's professional
1 49 association, or the media, and shall be protected
1 50 against reprisals or retaliatory or punitive actions
2 1 by the individual or institution if disclosure of the
2 2 information is not otherwise prohibited by statute and
2 3 if the information meets any of the following
2 4 requirements:
2 5 a. Constitutes state-mandated health data required
2 6 to be submitted to state agencies.
2 7 b. Informs state agencies or entities of
2 8 violations of state health, safety, occupational
2 9 health, licensure, or insurance laws.
2 10 c. Is reasonably believed by the health care
2 11 worker to be a violation of health and safety laws or
2 12 a breach of public safety that may lead to harm to
2 13 patients, consumers, or citizens, based upon the
2 14 health care worker's professional standards of care or
2 15 professional code of ethics.
2 16 A health care worker making a disclosure which
2 17 violates any provision of the federal Health Insurance
2 18 Portability and Accountability Act, Pub. L. No.
2 19 104-191, shall not be entitled to protection pursuant
2 20 to this section nor entitled to civil remedies which
2 21 might otherwise be available pursuant to subsection 7.
2 22 4. A health care worker disclosing in good faith
2 23 the information described in subsections 2 and 3 shall
2 24 be presumed to have established a prima facie case

2 25 showing a violation of subsection 2 or 3 by the health
2 26 care worker's employer if the individual or
2 27 institution employing the health care worker knows or
2 28 has reason to know of the disclosure, and if
2 29 subsequent to and as a result of the disclosure, one
2 30 or more of the following actions were initiated by the
2 31 employer:

2 32 a. Discharge of the health care worker from
2 33 employment.

2 34 b. Failure by the employer to take action
2 35 regarding a health care worker's appointment to,
2 36 promotion or proposed promotion to, or receipt of any
2 37 advantage or benefit in the health care worker's
2 38 position of employment.

2 39 c. Any adverse change to the health care worker's
2 40 terms or conditions of employment or any
2 41 administrative, civil, or criminal action or other
2 42 effort that diminished the professional competence,
2 43 reputation, stature, or marketability of the health
2 44 care worker.

2 45 An employer shall have the burden of proof
2 46 regarding any attempt to show that actions taken
2 47 pursuant to this subsection were for a legitimate
2 48 business purpose.

2 49 5. If an individual or institution employing a
2 50 health care worker is determined to have violated
3 1 state health, safety, or occupational health and
3 2 health licensure laws or regulations, or professional
3 3 standards of care or a professional code of ethics,
3 4 after a disclosure pursuant to subsection 2 or 3
3 5 results in an action as described in subsection 4,
3 6 such a determination shall create a presumption of
3 7 retaliation or reprisal against the health care worker
3 8 in violation of this section. Disclosure of a
3 9 reasonable belief that violations of health and safety
3 10 laws or breaches of public safety have occurred that
3 11 have caused or have a potential to cause harm to
3 12 patients, consumers, and citizens shall immediately
3 13 trigger the protection afforded by this section.

3 14 6. A person who violates this section commits a
3 15 simple misdemeanor and is subject to a civil action as
3 16 follows:

3 17 a. A person who violates this section is liable to
3 18 an aggrieved health care worker for affirmative
3 19 relief, including reinstatement with or without back
3 20 pay, or any other equitable relief the court deems
3 21 appropriate, including attorney fees and costs,
3 22 punitive or exemplary damages, and public notice of
3 23 the retaliation or reprisal undertaken against the
3 24 health care worker through publication in an official
3 25 newspaper in the city or county.

3 26 b. When a person commits, is committing, or
3 27 proposes to commit an act in violation of this
3 28 section, an injunction may be granted through an
3 29 action in district court to prohibit the person from
3 30 continuing such acts. The action for injunctive
3 31 relief may be brought by an aggrieved health care
3 32 worker or by the county attorney.

3 33 7. In addition to any other penalties applicable
3 34 to a person who violates this section, an individual,
3 35 institution, or organization employing a person who
3 36 violates this section shall be subject to a civil
3 37 penalty in the amount of one thousand dollars per
3 38 violation.>

3 39 #2. Title page, by striking line 6 and inserting
3 40 the following: <including other related provisions,
3 41 appropriations, and penalties, and>.

3 42 #3. By renumbering as necessary.

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3 47 HF 2734.318 81

3 48 rn/cf/1613